



U.S. Citizenship
and Immigration
Services

W

[REDACTED]

FILE:

[REDACTED]

Office: MIAMI

Date:

OCT 12 2004

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Adjustment from Temporary to Permanent Resident Status under
Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. §
1255a

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the District Director, Miami, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The director denied the application because the applicant evidently failed to meet the basic knowledge of history, government and English language provisions required for adjustment of status.

On appeal, counsel points out that the applicant provided Form I-699, Certificate of Satisfactory Pursuit, at the time of her interview. Counsel asserts that the director was entirely wrong in stating that the certificate was fraudulently conceived, and in stating that the applicant admitted that she could neither read nor write and only attended three hours of classes instead of the required 40 hours.

Any alien who has been lawfully admitted for temporary resident status may apply for adjustment of status if the alien (A) can demonstrate that he or she meets the requirements of section 312 of the Immigration and Nationality Act (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); **or**, (B) can demonstrate he or she is satisfactorily pursuing a course of study recognized by the Attorney General to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States. *See* 8 C.F.R. § 245a.3(b)(4).

An applicant may demonstrate that the section 312 requirements have been met by speaking and understanding English during the course of the permanent residence interview, **or** by passing a standardized section 312 test given in the English language by the Legalization Assistance Board with the Educational Testing Service or the California State Department of Education with the Comprehensive Adult Student Assessment System. *See* 8 C.F.R. § 245a.3(b)(4)(iii).

Pursuant to 8 C.F.R. § 245a.1(s), "satisfactorily pursuing" means:

- (1) An applicant for permanent resident status has attended a recognized program for at least 40 hours of a minimum 60-hour course as appropriate for his or her ability level, and is demonstrating progress according to the performance standards of the English/citizenship course prescribed by the recognized program in which he or she is enrolled (as long as enrollment occurred on or after May 1, 1987, course standards include attainment of particular functional skills related to communicative ability, subject matter knowledge, and English language competency, and attainment of these skills is measured either by successful completion of learning objectives appropriate to the applicant's ability level, or attainment of a determined score on a test or tests, or both of these); **or**,
- (2) An applicant presents a high school diploma or general educational development diploma (GED) from a school in the United States. A GED gained in a language other than English is acceptable only if a GED English proficiency test has been passed. (The curriculum for both the high school diploma and the GED must have included at least 40 hours of instruction in English and U.S. history and government); **or**,

- (3) An applicant has attended for a period of one academic year (or the equivalent thereof according to the standards of the learning institution), a state recognized, accredited learning institution in the United States and that institution certifies such attendance (as long as the curriculum included at least 40 hours of instruction in English and U.S. history and government); or,
- (4) An applicant has attended courses conducted by employers, social, community, or private groups certified (retroactively, if necessary, as long as enrollment occurred on or after May 1, 1987, and the curriculum included at least 40 hours of instruction in English and U.S. history and government) by the district director or the Director of the Outreach Program under Sec. 245a.3(b)(5)(i)(D) of this chapter; or,
- (5) An applicant attests to having completed at least 40 hours of individual study in English and U.S. history and government and passes the proficiency test for legalization, called the IRCA Test for Permanent Residency, indicating that the applicant is able to read and understand minimal functional English within the context of the history and government of the United States. Such test may be given by INS, as well as, State Departments of Education (SDEs) (and their accredited educational agencies) and Qualified Designated Entities in good-standing (QDEs) upon agreement with and authorization by INS.

In summary, to satisfy the English language and basic citizenship skills requirements under the "satisfactorily pursuing" standard as defined at sec. 245a.1(s) of this chapter the applicant must submit evidence of such satisfactory pursuit in the form of a "Certificate of Satisfactory Pursuit" (Form I - 699) issued by the designated school or program official attesting to the applicant's satisfactory pursuit of the course of study as defined at sec. 245a.1(s) (1) and (4) of this chapter; **or** a high school diploma or general educational development diploma (GED) under sec. 245a.1(s)(2) of this chapter; **or** certification on letterhead stationery from a state recognized, accredited learning institution under sec. 245a.1(s)(3) of this chapter; **or** evidence of having passed the IRCA Test for Permanent Residency under sec. 245a.1(s)(5) of this chapter. 8 C.F.R. § 245a.3(b)(4)(iv).

The applicant furnished the Form I-699, Certificate of Satisfactory Pursuit, at the time of her January 18, 1996 interview regarding this application for permanent residence. Nevertheless, the interviewing officer did not accept the certificate as evidence of the applicant having met the requirements, and tested her ability in reading and writing English, and knowledge and understanding of the history and government of the United States. The applicant was unable to pass the test. The applicant was re-interviewed pursuant to 8 C.F.R. § 245a.3(a)(4)(B) on July 18, 1996 and again failed the examination. The officer who conducted the second interview noted that the applicant "only attended 3 hours of classes in 1994. Cannot read or write. Signs name only. Failed test twice" In the denial notice, the director indicated that the applicant stated under oath that she could neither read nor write English and had only attended the course for three hours. The record is bereft of any such statement by the applicant.

On appeal, counsel submits two statements from the Hialeah-Miami Lakes Adult Education Center, which had provided the Certificate of Satisfactory Pursuit. The principal, Robert Villano, indicates that the applicant was registered at that institution in its citizenship program from May 9, 1994 to August 9, 1994. In the other statement, teacher [REDACTED] explains that the applicant attended and completed a 40-hour class taught by him and [REDACTED] in June of 1994. He indicates that she was accompanied at

all times by her niece. He finally states that, after successfully competing the course, she received her certificate on June 28, 1994.

Counsel points out that the applicant is not well educated, and asserts that she reads and writes very slowly. She claims that the applicant explained this to the officer at her second interview, but that he spoke very quickly and grew impatient with her. Counsel maintains that the statements from the officials at the adult education center belie the note from the interviewing officer, who indicated that the applicant stated that she only attended three hours of instruction. She also stresses that one who reads and writes very slowly is not illiterate. Counsel points out that the applicant, in taking care of herself and her niece for years, had to handle all household and financial matters, which required some reading and writing skills.

Regarding the Certificate of Satisfactory Pursuit, it is noted that there are provisions allowing a district director to reject it. He or she shall do so if it is determined that the certificate is fraudulent or was fraudulently issued. 8 C.F.R. § 245a.3(b)(10)(ii). Given the statements from the adult education center, and the absence of any evidence that the director investigated the matter and determined on a factual basis that the applicant did not attend the course for at least 40 hours as required, it is concluded that the applicant did attend the course to the extent required and that the certificate itself is genuine and therefore not fraudulent.

Another provision allows a director to reject a certificate if it is determined that the course provider is not complying with INS regulations. *See* 8 C.F.R. § 245a.3(b)(10)(iii). However, this regulation requires a director to advise the course provider in writing of the deficiencies and give the provider 30 days in which to correct them. There is no indication that this was done in this case.

Finally, course providers that engage in fraudulent activities or fail to conform with INS regulations will be removed from the list of INS approved programs. 8 C.F.R. § 245a.3(b)(10)(v). There is no evidence that the course provider in this case was removed from the list.

There is insufficient evidence to conclude that the Certificate of Satisfactory Pursuit is fraudulent, or was issued fraudulently. Therefore, the applicant has demonstrated that she "satisfactorily pursued" a course of study recognized by the Attorney General.

ORDER: The appeal is sustained.